



# POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed:	OTN/LiveScan Number G 829115-0	Complaint/Incident Number 49001209
Defendant Name	First: PWSA	Middle:	Last: PITTSBURGH WATER AND SEWER AUTHORITY

## AFFIDAVIT OF PROBABLE CAUSE

Being duly sworn according to law, your Affiant, Special Agent Brian J. Kosoglow, Office of Attorney General, Environmental Crimes Section, deposes and states that there is probable cause to believe that the crimes described in this affidavit were committed by the Pittsburgh Water and Sewer Authority (PWSA) in Allegheny County, Pennsylvania. Your Affiant believes that probable cause exists for the issuance of a summons based upon the following facts and circumstances:

### Introduction

- 1) Your Affiant, Brian J. Kosoglow is employed by the Pennsylvania Office of Attorney General (OAG) Bureau of Criminal Investigations (BCI), Environmental Crimes Section (ECS), as a Special Agent and has worked for the OAG since December 2007, and has been assigned to the BCI/ ECS since 2015. As a Special Agent, your Affiant has been involved with criminal investigations involving violations of Pennsylvania's environmental laws and the Pennsylvania Crimes Code.
- 2) On October 6, 2017, at the request of the Deputy General Counsel Anne Gingrich Cornick, Office of General Counsel and pursuant to 71 Pa. CSA § 732-205(a)(6), the OAG, BCI, ECS, assumed jurisdiction in the investigation into alleged criminal actions conducted by PWSA, in Allegheny County, Pa
- 3) The OAG initiated a criminal investigation in this case based upon a referral by the Pennsylvania Department of Environmental Protection (DEP) pursuant to the provisions of the Commonwealth Attorneys Act, 71 Pa. C.S.A. 732-205(a)(6).
- 4) The referral stated in part that the DEP Safe Drinking Water Program developed information that the PWSA failed to comply with regulations under the Pennsylvania Safe Drinking Water Act, 35 P.S. §§ 721.1 (SDWA); specifically 25 Pa Code § 109.1107(d)(4)(i).
- 5) PWSA is the water Authority that serves as the public water supplier for the City of Pittsburgh and several outlying boroughs and townships. PWSA provides water service to over 520,000 people.
- 6) In 2016, PWSA violated the Lead Action Level under the Lead and Copper Rule. (See Pa. Code § 109.1107(d)(4)(i). As a result of exceeding the Lead Action Level in 2016, PWSA was required to replace 7% of its lead service lines as a step in bringing the system closer to compliance. (See Pa. Code § 109.1107(d)(2)).
- 7) The purpose of the Lead and Copper Rule is to protect public health by minimizing lead and copper levels in drinking water, primarily by making water less corrosive. The Lead and Copper Rule establishes an action level of 0.015 mg/L for Lead and 1.3 mg/L for Copper. The Action Level is a concentration, which when exceeded at the consumer tap requires the water supplier to take action to address the high concentration.
- 8) The law requires that the water supplier explain to residents that they may experience a temporary increase of lead levels in their drinking water, and provide them with information on measures they can take to minimize their exposure to lead. Post-replacement water sampling is necessary to confirm the safety or danger of residents' drinking water.
- 9) PWSA conducted lead service line and partial lead service line replacements during 2016 and 2017, however, PWSA failed to comply with the regulation requiring them to provide pre-replacement notification and post-replacement notification and post-replacement sampling to affected residences.





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## Investigation

- 10) 10) On October 19, 2017, your Affiant reviewed referral documents from the DEP indicating the Department was made aware that, as a result of exceeding the Lead Action Level in 2016, PWSA was required to replace 7% of its lead service lines (LSL). PWSA conducted LSL replacements during 2016 and 2017 including partial LSL replacements. PWSA is an experienced water supplier which has operated under the Safe Drinking Water Regulations for decades.
- 11) Your affiant was made aware that on September 15, 2016, prior to PWSA's performance of most of the replacements, DEP staff met with PWSA and expressly reiterated PWSA's obligation to comply with the partial LSL replacement requirements.
- 12) PWSA continued to ignore these requirements even after being notified of their duty to notify affected residences prior to partial line replacement and sample the water within 72 hours post replacement.
- 13) When the line replacements were complete, PWSA reported back to the DEP that they had completed the replacements of the LSL's. Based upon the information submitted to the DEP by PWSA, DEP determined that PWSA failed to notify residents in advance about partial line replacements and/or failed to sample within 72 hours post replacement in at least 154 residences affected by the replacements. The violations by PWSA created a risk of harm to its residential customers; specifically, the disturbance of the remaining lead pipe has the potential to release elevated lead levels into the home for a significant period of time.
- 14) On February 14, 2018, your Affiant did meet with Renee Diehl of the Safe Drinking Water Program, PA DEP at 400 Waterfront Drive, Pittsburgh, PA 15222. DIEHL has been with the DEP for 11 years and has served as an Environmental Group Manager. She has a background in biology and is currently serving with the Safe Drinking Water Program.
- 15) Diehl advised, as a result of exceeding the Lead Action Level in 2016, PWSA was required to replace 7% of its (LSL's) and that the authority is required to provide advance notice and perform post replacement water sampling when it performs a partial LSL replacement for its residential customers. Your Affiant was provided with a list of residences who had a partial replacement of their service lines in which PWSA failed to provide the required notification and failed to collect 72 hour post replacement water samples.
- 16) Diehl confirmed the PWSA had triggered the Lead Line Replacement requirement due to a greater than 15ppb sample. The Lead Action Level requires the replacement of 7% of the lines until you have 2 consecutive monitoring periods which are at or below the Lead Action Level (or 15ppb) which means you are back into compliance. Diehl confirmed the PWSA only has to replace the part of the water system they own, in the PWSA's situation, they own the main line (which travels down the center of the street) and the lateral lines up to the curb of each residence. The property owner owns the lateral line from the curb into the residence. Under the law, the Water Authority is supposed to offer to replace the owner's portion of the line in addition to its own portion, at the owners expense. This option was not provided to 162 residences that were affected by the PWSA's failure to notify of the partial line replacement and/or failure to sample within 72 hours of the partial line replacement.
- 17) Diehl provided your Affiant with a spreadsheet listing the affected addresses where the Lead Service Lines were replaced without 45- Day Notice. The spreadsheet also contained information on when Post Construction Samples Bottles and Filters were delivered.
- 18) The provided documentation showed that residents who received partial replacement of their Lead lines were not provided with a Post Construction sample or filter until the following year. The addresses of the affected residences are listed below:





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Docket Number	Date Filed	OT/NL LiveScan Number	Complaint/Incident Number
		G 829446 0	49001209
Defendant Name	First P.W.S.A	Middle	Last PITTSBURGH WATER AND SEWER AUTHORITY

Street Address	Date Replaced	Last Construction Sample and Filter Date Provided
244 Flowers Avenue	7/1/2016	7/1/2017
5309 Holmes St.	7/5/2016	7/6/2017
4363 Stanton Ave.	7/6/2016	7/6/2017
5323 Holmes St.	7/8/2016	7/6/2017
3522 Simen Ave.	7/11/2016	7/6/2017
428 Fisk St.	7/12/2016	7/6/2017
921 N. Saint Clair St.	7/12/2016	7/6/2017
5335 Holmes St.	7/12/2016	7/6/2017
5333 Holmes St.	7/12/2016	7/6/2017
5331 Holmes St.	7/12/2016	7/6/2017
5329 Holmes St.	7/12/2016	7/6/2017
2100 Straubs Ln.	7/13/2016	7/6/2017
5120 Lytle	7/14/2016	7/7/2017
1012 Winterton St.	7/18/2016	7/6/2017
4221 Shields St.	7/19/2016	7/7/2017
206 Chesterfield Rd.	7/21/2016	7/7/2017
5264 2nd Ave.	7/21/2017	7/7/2017
5109 Carnegie St.	7/25/2016	6/30/2017
5108 Carnegie St.	7/25/2016	6/30/2017
5266 2nd Ave.	7/26/2016	7/7/2017
4038 Murray Ave.	7/26/2016	7/7/2017
5131 1/2 Carnegie St. x2	7/27/2016	6/30/2017
5133 Carnegie St.	7/27/2016	6/30/2017
5135 Carnegie St.	7/27/2016	6/30/2017
2309 Tilbury	7/29/2016	7/7/2017
5150 Carnegie St.	8/1/2016	6/30/2017
5148 Carnegie St.	8/1/2016	6/30/2017
5156 Carnegie St.	8/2/2016	6/30/2017
5154 Carnegie St.	8/2/2016	6/30/2017
5415 Broad St.	8/2/2016	7/6/2017
5159 Carnegie St.	8/3/2016	6/30/2017
5157 Carnegie St.	8/3/2016	6/30/2017
512 Armandale St.	8/3/2016	7/6/2017
5158 Carnegie St.	8/4/2016	6/30/2017
5161 1/2 Carnegie St.	8/4/2016	6/30/2017
5163 Carnegie St.	8/4/2016	6/30/2017
525 Melwood St.	8/4/2016	7/6/2017
5165 Carnegie St.	8/5/2016	6/30/2017
2300 Primrose St.	8/5/2016	7/7/2017
6395 Stanton Ave.	8/8/2016	7/6/2017
17 Dunlap St.	8/8/2016	7/6/2017
3193 Niagara St.	8/12/2016	7/7/2017



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3105 Niagara St. 8/12/2016 7/7/2017  
 2810 Salisbury St. 8/16/2016 7/7/2017  
 7220 Meade St. 8/19/2016 7/7/2017  
 1222 Lancaster Ave 8/25/2016 7/7/2017  
 125 Tuscola St. 8/30/2016 7/6/2017  
 7 Holt St. 9/1/2016 7/7/2017  
 1415 Buena Vista 9/2/2016 7/6/2017  
 5406 Keystone St. 9/6/2016 7/6/2017  
 5508 Beacon St. 9/7/2016 7/7/2017  
 5418 Garage Keystone St. 9/7/2016 7/6/2017  
 2329 Hazelton St. 9/8/2016 7/6/2017  
 2331 Hazelton St. 9/9/2016 7/6/2017  
 5429 Keystone St. 9/13/2016 7/6/2017  
 5430 Keystone St. 9/13/2016 7/6/2017  
 719 Saline St. 9/13/2016 7/7/2017  
 5431 Keystone St. 9/14/2016 7/6/2017  
 67 Hanover St. 9/14/2016 7/7/2017  
 201 Elysian St. 9/15/2016 7/7/2017  
 208 W. Elizabeth St. 9/15/2016 7/7/2017  
 911 Maryland Ave. 9/15/2016 7/7/2017  
 915 Maryland Ave. 9/15/2016 7/7/2017  
 927 Maryland Ave. 9/15/2016 7/7/2017  
 5434 Natrona Way 9/15/2016 7/6/2017  
 5438 Natrona Way 9/15/2016 7/6/2017  
 2510 Maple Ave. 9/16/2016 7/6/2017  
 212 W. North Ave. 9/25/2016 7/6/2017  
 3352 McNeil St. 10/4/2016 7/6/2017  
 1544 Shady Ave. 10/4/2016 7/7/2017  
 53 Craighead 10/4/2016 7/7/2017  
 250 Meyran Ave. 10/5/2016 7/7/2017  
 1032 Grand Ave. 10/14/2016 7/6/2017  
 419 W. Elizabeth St. 10/17/2016 7/7/2017  
 413 Gettysburg St. 10/18/2016 6/30/2017  
 234 Flowers Ave. 10/19/2016 7/7/2017  
 242 Flowers Ave. 10/19/2016 7/7/2017  
 32 Holt St. 10/20/2016 7/7/2017  
 10 Spring St. 10/20/2016 7/6/2017  
 12 Spring St. 10/20/2016 7/6/2017  
 8 Spring St. 10/20/2016 7/6/2017  
 7055 Chaucer St. 10/21/2016 7/6/2017  
 7057 Chaucer St. 10/21/2016 7/6/2017  
 2310 Patterson (Rear) 10/25/2016 7/7/2017  
 5243B Duncan St. 10/26/2016 6/30/2017  
 11 Spring St. 10/27/2016 7/6/2017  
 4826 Scotia St. 10/28/2016 7/6/2017  
 146 S 17th St. 10/31/2016 7/7/2017 w/ Full replacement





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Complaint/Incident Number

49001209

Docket Number

Date Filed

OTN/LiveScan Number

G 829115-0

Defendant Name

First  
PW:TA

Middle

Last

PITTSBURGH WATER AND SEWER  
AUTHORITY

1542 Oberlin St. 11/1/2016 7/6/2017  
 9 Spring St. 11/1/2016 7/6/2017  
 1544 Oberlin St. 11/2/2016 7/6/2017  
 3034 Shadeland Ave. 11/4/2016 7/6/2017  
 319 Sweetbriar St. 11/8/2016 7/6/2017  
 5858 Burchfield Drive 11/9/2016 7/7/2017  
 154 Olympia St. 11/9/2016 7/6/2017  
 5114 Duncan St. 11/14/2016 6/30/2017  
 2035 Lautner St. 11/15/2016 7/6/2017  
 617 Chess St. 11/25/2016 7/6/2017  
 615 Chess St. 11/25/2016 7/6/2017  
 524 West Burgess 11/30/2016 7/6/2017  
 840 Excelsior St. 12/9/2016 7/7/2017  
 48 S 22nd St. 12/12/2016 7/7/2017  
 2612 Stella St. 12/28/2016 7/7/2017  
 2702 Burham St. 1/4/2017 7/7/2017 w full replacement  
 2613 Brighton Rd. 1/4/2017 7/6/2017  
 6517 Deary St. 1/5/2017 7/6/2017  
 1122 Marshall Ave. 1/6/2017 7/6/2017  
 2305 Shady Ave. 1/20/2017 7/7/2017  
 406 Belonda St. 1/25/2017 7/6/2017  
 1406 Liverpool St. 1/26/2017 7/6/2017  
 1404 Liverpool St. 1/26/2017 7/6/2017  
 1707 Jane St. 1/30/2017 7/7/2017  
 452 Kathleen St. 2/1/2017 7/6/2017  
 162 Plymouth St. 2/6/2017 7/6/2017  
 164 Plymouth St. 2/6/2017 7/7/2017  
 1444 Severn St. 2/14/2017 7/7/2017  
 7000 Meade Pl. 2/15/2017 7/7/2017  
 283 Paul St. 2/15/2017 7/6/2017  
 905 Excelsior St. 2/17/2017 7/7/2017  
 4520 Plummer St. 2/19/2017 7/6/2017  
 2337 Carey Way 2/22/2017 7/7/2017  
 3707 Atkins St. 2/22/2017 7/6/2017  
 514 Cato St. 2/27/2017 7/7/2017  
 278 Lombard St. 2/28/2017 7/6/2017  
 1433 Orchlee st. 2/28/2017 7/6/2017  
 1815 Rialto St. 2/28/2017 7/7/2017  
 1232 Goe Ave. 3/1/2017 7/6/2017  
 4617 Carroll St. 3/1/2017 7/6/2017 w full replacement  
 4213 Shields St. 3/3/2017 7/7/2017  
 3016 Pulawski Way 3/3/2017 7/6/2017  
 7421 Ben Hur St. 3/4/2017 7/7/2017  
 6317 Wadron St. 3/8/2017 7/7/2017  
 101 Craighead St. 3/9/2017 7/7/2017  
 403 Lanner Ave. 3/9/2017 7/6/2017



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403 1/2 Larimer Ave. 3/9/2017 7/6/2017  
 106 Carnegie Pl. 3/11/2017 7/7/2017  
 6739 Stanton Ave. 3/14/2017 7/6/2017  
 1210 S. Negley Ave. 3/14/2017 7/7/2017  
 2941 Perrysville Ave. 3/15/2017 7/6/2017  
 5823 Nicholson St. 3/17/2017 7/7/2017  
 3636 Mintwood St. 3/21/2017 7/6/2017  
 3460 Gass Ave. 3/30/2017 7/6/2017  
 6316 Waldron St. 4/4/2017 7/7/2017  
 1118 Lancaster St. 4/4/2017 7/7/2017 w full replacement  
 2925 Shadeland Ave. 4/25/2017 7/6/2017  
 1125 Penn Ave. 4/27/2017 7/6/2017  
 97 Craighead 5/1/2017 7/7/2017  
 4315 Gladstone St. 5/4/2017 7/7/2017  
 1400 N. Homewood Ave. 5/5/2017 7/6/2017  
 17 Greenbush St. 5/5/2017 7/6/2017  
 5138 Natrona Way 5/8/2017 7/6/2017  
 1750 Beechwood Blvd. 5/9/2017 7/7/2017 w full replacement  
 2331 Sarah St. 5/11/2017 7/7/2017  
 2916 Webster Ave. 5/12/2017 7/6/2017  
 314 Millbridge St. 5/15/2017 7/7/2017  
 5407 Guarino Rd. 5/22/2017 5/22/2017 and 6/7/2017  
 402 Sweetbriar St. 6/2/2017 6/2/2017 and 7/6/2017  
 79 S. 16th St. 6/15/2017 6/15/2017 and 7/7/2017  
 32 Exeter St. 6/19/2017 6/19/2017 and 7/7/2017  
 300 Prospect 6/21/2017 6/21/2017 and 6/30/2017  
 1226 Monterey St. 6/22/2017 6/22/2017 and 7/6/2017  
 4521 Butler St. 6/22/2017 6/23/2017

## Relevant Statutory Provisions

19) Safe Drinking Water. System Management Responsibilities - 25 PA Code § 109.1107(d)(4)(i)

(d) Lead service line replacement

(4) Conditions of replacement. The water supplier shall replace the portion of the lead service line that it owns. In cases where the system does not own the entire lead service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system will replace the portion of the service line that the system owns and shall offer to replace the owner's portion of the line. A system is not required to bear the cost of replacing the privately-owned portion of the line or to replace the privately-owned portion of the line if the owner refuses to pay for the cost of replacement of the privately owned portion of the line, or if any laws prohibit this replacement. A system that does not replace the entire length of service line shall complete the following tasks

(i) The system shall provide notice to residents of all buildings served by the line at least 45 days prior to commencing partial line replacement. The Department may allow a shorter time period for notification in the case of emergency repairs. The notice must explain that residents may experience a temporary increase of lead levels in their drinking water, along with information on measures consumers can take to minimize their exposure to lead. Residents shall be informed that the system will, at the system's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content in accordance with § 109.1103(h)(5) within 72 hours after the completion of the partial replacement.





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of the service line.

Safe Drinking Water Act. Penalties and Remedies - 35 P.S. 721.13.13

(d) Any person who willfully or negligently violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to the act is guilty of a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than \$1,250 nor more than \$12,500 for each separate offense or to imprisonment for a period of not more than one year, or both.

Conclusion

20) Based upon the above mentioned facts, your Affiant has probable cause to believe that PWSA has committed criminal violations of the Pennsylvania Crimes Code and the Safe Drinking Water Act as set forth in the criminal complaint, which is incorporated herein by reference.

I, **BRIAN KOSOGLOW**, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

I CERTIFY THAT THIS FILING COMPLIES WITH THE PROVISIONS OF THE CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA THAT REQUIRE FILING CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAN NON-CONFIDENTIAL INFORMATION AND DOCUMENTS.

Sworn to me and subscribed before me this

day of

(Signature of Affiant)

Date

Magisterial District Judge

My commission expires first Monday of January.

CHRIS C. STEPHENS,  
MAGISTERIAL DISTRICT JUDGE  
MAGISTERIAL DISTRICT 15-7 22  
MY COMMISSION EXPIRES ON THE  
FIRST MONDAY IN JANUARY, 2022